air with high sulphur content and other matters. We have seen the opposition to cause of action does not arise in individuals who happen to be somebody's neighbor but those oppositions to cause of action arise by those who are the controllers of the means of production and distribution.

I submit that the presentation of the Committee on Economic Development seeks to provide in this setting, I mean in a setting where the control in this country is first of all determined on an economic priority basis to provide in this setting some human dimensions of compassion, understanding and sympathy. So we ought to provide this right. We ought to provide this cause of action whereby there is some balance and some control on the rampant prostitution and rape of natural resources which is solely the preoccupation of the owners of the means of production and distribution. This provides the human element which has been so sorely lacking on the national level, which we cannot control, but certainly brings that as an aspect of local affairs.

In final comment, this right even in the posture that the committee presents it to us has the limit of "as provided by law." We ought to adopt this section and allow the legislature to moderate it.

(Applause)

CHAIRMAN BALDWIN: Delegate Jones and then Talmadge Moore.

MR. JONES: Mr. Chairman, first of all I have a question to the committee, I am wondering about the suits and counter suits in this article. It seems to me that we are going to have suits and counter suits. For example, I wonder whether my neighbor will be able to sue me if I stop cutting my grass. If my grass is not cut, am I going to be sued? It seems to me that the language is not specific in this particular article and I don't think we need to have all of these suits and counter suits.

CHAIRMAN BALDWIN: I think the general counsel is the one to respond. Did you get the question? He is concerned about --

MR. MARCUS: Mr. Moore, that language exists in Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, Ohio. Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington and Wyoming, and Hawaii, Illinois, and I believe a varient of it in Alaska.

CHAIRMAN BALDWIN: That still doesn't tell him whether or not his neighbor can sue him.

MR. MARCUS: I am addressing the first part of his statement.

CHAIRMAN BALDWIN: Okay.

MR. MARCUS: The answer to that question lies, Mr. Moore, in the last line in two place. It lies in the last sentence of the proposed article which gives the state legislature the right to limit the exercise of that particular right. In other words, the legislature does not -- Mr. Moore, the legislature does not have to legislatie like every possible incident which may in fact take place, as was suggested by some other delegates, but in fact simply has to legislate to say a particular class of incidents are in fact not subject to that particular suit.

Indeed, that also applies in some regard to the portion which refers to the public, to the fact that the liability of the public sector as well, the legislature can in fact temper that right. That is one place.

The other place is that there exists in law something known as the rule of reason, that a court will in fact take a look at a particular suit and judge whether or not that particular suit happens to be reasonable in light of the case law that preceded it, the language which exists in the state legislature and other language which may so be relevant.

Do you have anything to add, Mr. Counsel?

MR. T. MOORE: I have another question following that. In the case where people do not pick up my garbage and trash and that increases a hazard, I cannot sue the state?

MR. CROFT: Yes, under this article you could.

MR. THOMAS: There are a lot of things you can do before a law suit. For instance, I am sure there will be a health, some kind of health and safety commission which will take care of those things at an early stage, plus that somebody actually -- I doubt if that many people will actuall sue you for not cutting your grass.

MR. T. MOORE: But it will be in the constitution right, you will have that right?

MR. THOMAS: If in your opinion it is not a clean and healthy environment, if it is not checked by subsequent legislation.

CHAIRMAN BALDWIN: Delegate Jones.

MS. JONES: I would like to speak on one more point on What Delegate Coates just told you about the environment. The state does not have the right to kill me and my neighbors. When they saw the compost at the treatment plant -- now I allowed them to come into my house to take samples so that they could allow molds to grow to see if that turned up in my house. The overwhelming majority of people who have tuberculosis in this city live east of the river. People who have other kinds of lung diseases, people who have heart problems, those are the statistics that you use to say that my area is one of those areas, there is a social indicator that you use to say, you know, we have the welfare belt, the worst housing and all of this kind of stuff. Those are the people who die first from that compost, and it seems to me that I have the right not to be killed by that.

There have been studies not only in this city but in this country that have said that composting creates germs and composting must be done in the open. At one point they can cover it, but at some point it has to be done in the open. And I maintain that my right as an individual is one that the state does not have the right to create a hazard that kills me. I urge people to vote for this right of individuals.

CHAIRMAN BALDWIN: Delegate Charlotte Holmes.

MR. OULAHAN: I move that we close debate --

CHAIRMAN BALDWIN: Delegate Holmes wishes to respond. Delegate Kameny, Delegate Johnson and Delegate Freeman.

MR. KAMENY: Mr. Chairman and fellow delegates, on a number of occasions throughout this debate people have referred to some horrible thought, some unmentionable thought has been spoken that we might possibly be impairing sovereign immunity and allowing suits against the state.

Sovereign immunity is an obnoxious holdover from the divine right of kings and monarchical days of the monarchs in Britain and the Bourbon monarchs in France before the French Revolution. Be informed that the Committee on Rights has under serious consideration a right to abolish sovereign immunity. So don't let the mention of that every few minutes, as if somehow we are doing something dreadful by beginning to infringe upon sovereign immunity, that we are undertaking the unspeakable. We are not. We are undertaking the obvious, to say that a citizen can't sue a state that exists to serve him is offensive. Let's abolish it and let it certainly not a consideration in our discussion of the particular issue on the floor now.

If it provides a right to sue the state, fine, the state will be suable for everything.

MS. : Without their permission. I don't need their permission to go sue them. They will be sued when I am telling them I am suing them.

CHAIRMAN BALDWIN: Delegate Johnson.

MS. HOLMES: Mr. President, I move the previous question.

CHAIRMAN BALDWIN: There are a couple of other delegates that would like to speak and then we will entertain that motion. Delegate Freeman.

MS. FREEMAN: No.

CHAIRMAN BALDWIN: Delegate Robinson.

MR. JOHNSON: Mr. Chairman, I second that we move the previous question.

CHAIRMAN BALDWIN: It has been moved and seconded that we move the previous question. Those in favor of the --

MR. CROFT: The motion is to strike the section.

MR. OULAHAN: May I close debate, please?

CHAIRMAN BALDWIN: Yes, you may.

MR. OULAHAN: Mr. Chairman, this is not a question of compassion, it is not a question of the problems which exist, it is not a question of abolishing it. It is a question of a system of litigation which is being created by this section. For thirty years, I have been trying to fashion out a federal statute on rights to causes of action. Believe me, this is the best that I have ever seen. I would hope that maybe you might draw back, since lawyers are not popular here, and vote against this because this will be your full employment bill for lawyers once it goes into effect. Thank you.

CHAIRMAN BALDWIN: I think a record was set. Three delegates spoke to Section 3, Right of Individuals.

MR. CROFT: Mr. Chairman, I move the previous --

CHAIRMAN BALDWIN: The previous question was called on the amendment, to delete, the Oulahan amendment. Those in favor of the Oulahan amendment signify by a show of hands.

(A show of hands.)

MR. BRUNING: 12.

CHAIRMAN BALDWIN: Those opposed?

(A show of hands.)

MR. BRUNING: 16.

CHAIRMAN BALDWIN: Abstain?

(No response)

CHAIRMAN BALDWIN: The amendment is rejected.

Mr. Croft.

MR. CROFT: Mr. Chairman, I move the adoption of Section 3.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we adopt Section 3. Those in favor signify by saying "yes."

(A chorus of "yes.")

CHAIRMAN BALDWIN: Those opposed, "nay."

(A chorus of "nay.")

CHAIRMAN BALDWIN: Abstension?

(No response)

CHAIRMAN BALDWIN: Section 3 is adopted.

Delegate Schrag.

MR. SCHRAG: For the purpose of enabling those that have been here since the beginning of the session to get a bite of dinner, I move for a ten-minute recess.

MR. JACKSON: I second it.

CHAIRMAN BALDWIN: It has been moved and properly seconded that we recess for a period of ten minutes. It is so ordered.

(Short recess.)

(5-A)

MS. FREEMAN: There are 23 people in here. Could everybody please sit down. Before we start again, it has been suggested that we get a -- may we have it quiet in here. The members of the Statehood Commission will be sworn in at 11 o'clock on Monday, May 17, here at 11:00 in the morning, and Judge Luke Moore, of Superior Court, will administer the oath of office to the Commissioners.

Delegate Jordan, did you want to list all the people who will be sworn in?

MR. JORDAN: I would just like to make one point, that one person on the board was -- there are two names missing from Ward 1, so Ward 1 will only have one person, and a couple of other wards have had people say they could not serve, one in Ward 6 and one in Ward 8. But if any of you who can come, please do.

CHAIRMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: Could we request that Delegate Jordan or the staff provide a list of Statehood Commission members to all delegates, through the box distribution s ystem?

CHAIRMAN FREEMAN: I believe that is being provided for. Delegate Croft.

MR. CROFT: Madam Chairperson, I move the adoption of Section 4 of the article, entitled "Legislative Responsibility."

MS. : I second it.

CHAIRMAN FREEMAN: Is there discussion of that motion? First is there a minority report, Delegate Croft?

MR. CROFT: There is no minority report in front of me on that.

CHAIRMAN FREEMAN: Let's see, I had two amendments submitted to me earlier. I had an amendment from Delegate

Eichhorn. Is she present?

(No response)

CHAIRMAN FREEMAN: And Delegate Charles Mason.

MR. MASON: That's right.

CHAIRMAN FREEMAN: All right, let's do Charles Mason first, since he is present.

MR. MASON: That has already been adopted.

CHAIRMAN FREEMAN: Okay. The amendment then that was submitted earlier was an amendment to strike Section 4, and that was submitted by Delegate Eichhorn. Is there a second to that motion?

MR. : I second it.

CHAIRMAN FREEMAN: All right. Discussion on that motion?

I suppose that is totally unappropriate. I don't know what to do, since the delegate isn't here. It was submitted to me earlier.

MR. : A point of information, Madam Chair. As I sat here and listened briefly, there were other persons who left or submitted amendments that were moved and I wonder why is the body taking a negative view with respect to Delegate Eichhorn's amendment.

CHAIRMAN FREEMAN: I stand corrected. We have only been considering minority reports which have been duly submitted. I can't hear. Is somebody speaking? Is somebody trying to get the floor?

We won't consider this amendment because in fact the mover of that amendment is not present.

Is there any discussion on Section 4? Any discussion? Delegate Jackson.

MR. JACKSON: No. I call for the question.

CHAIRMAN FREEMAN: All right. All those in favor of adopting Section 4, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: Opposed?

(A chorus of "no.")

CHAIRMAN FREEMAN: Abstension?

MR. : No.

CHAIRMAN FREEMAN: One abstension. Section 4 is hereby adopted.

MR. CROFT: Madam Chair, I move the adoption of the article entitled "The Environment," with all the amendments that have been made.

MR. : I second it.

CHAIRMAN FREEMAN: Are there any minority reports, Delegate Croft?

MR. CROFT: We covered all the minority reports, section by section.

CHAIRMAN FREEMAN: Are there any amendments?

MR. CROFT: We have gone through each of the -- we have done this section by section, and so we are at the stage of -- now we are considering the adoption of the entire article.

CHAIRMAN FREEMAN: I'm sorry.

MR. CROFT: As amended.

CHAIRMAN FREEMAN: Right. I'm sorry. Thank you.

Is there any discussion on the motion?

(No response)

CHAIRMAN FREEMAN: All those in favor of adopting the section on the environment, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRMAN FREEMAN: May I have a show of hands. All those in favor, please raise your hand.

(A show of hands.)

MR. BRUNING: 17.

CHAIRMAN FREEMAN: All those opposed, please raise your hand.

(A show of hands.)

MR. BRUNING: 5.

CHAIRMAN FREEMAN: Abstensions.

(No response)

CHAIRMAN FREEMAN: The motion carries and we have adopted the section on environment.

Delegate Croft.

MR. CROFT: Madam Chair, I move the adoption of Section 1 in the article entitled "Transportation, Utilities and Energy."

CHAIRMAN FREEMAN: Is there a second to that?

MR. : I second.

CHAIRMAN FREEMAN: Are there any minority reports, Delegate Croft?

MR. CROFT: If you will hold for a second, I will -- yes, there are. There is one by Delegate Corn.

MR. : That is Section 2.

MR. CROFT: That's right. I'm sorry. There are no minority reports.

CHAIRMAN FREEMAN: I believe there is an amendment from Delegate Schrag. I don't seem to have the list which I created earlier.

MR. SCHRAG: Madam President, I move on line 3 to delete the words "ensure to all residents and" and substitute the words "provide for."

CHAIRMAN FREEMAN: Is there a second?

MR. : I second it.

MR. SCHRAG: I will explain the amendment. The phrase "ensure to all residents and" has two problems with it, one with the word "ensure" and the other with the word "residents." "Ensure" could be construed to mean a legal guarantee and could be held to imply that any person who has a grievance about a bus line not reaching that person's house or a bus stop not coming close enough to that person's house should be able to sue the state and to win and force the state to redirect its bus lines and its subway lines on the ground that that particular person has been ensured convenient access to effective means of public transportation.

The phrase "all residents" strengthens this problem and makes the problem worse because it would mean every resident, no matter how infirm, for example, had this ensuring or guarantee that for that particular resident there would be convenient access to "effective means of public transportation." I think these are all -- it is a worthy goal to provide convenient access to effective means of public transportation for every citizen, but I don't think that the courts are the best place for us to provide this. I don't think we should provide an open-ended invitation for people to use the courts to redirect our bus lines. I think this has to be a legislative responsibility.

"Provides for" sets forth a goal and a policy of the state. It is very similar to the kind of language that was used in the previous section, where we said the state shall provide for the preservation and development of open green space and sites, and so forth, and I think that is the kind of section we should have in general, where we are setting out legislative goals, rather than providing open-ended access to win cases in the courts helter-skelter, without any planned policy.

CHAIRMAN FREEMAN: Is there any discussion on the Schrag amendment?

(No response)

Are we ready to vote? All those who are in favor of the Schrag amendment to delete the words in Section 1 "ensure to all residents and" and replace it with "provide for," please raise your hands.

I'm sorry, Delegate Jones?

MS. JONES: I would like to ask Delegate Schrag a question concerning this. I would like to know if this will provide for -- will take into account those people who come out to get bus service who are handicapped and who indeed need special apparatuses to walk to buses and other things in order to use the public transportation? Now, I am not talking about the infirmed and people who need to be carried on stretchers and litters and what-not to get wherever they need to go. I am talking about the handicapped who is mobile enough to go to a bus stop and mobile enough to make an attempt to get on the bus and who need some professional help in wanting to do that, and I want to know if it provides for the handicapped, the blind, people with canes, crutches, and this kind of thing to get on the buses, to make sure that they can use the public transportation to go wherever.

CHAIRMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: Delegate Jones, the section as amended would state that it is the policy of the state to provide for all geographical communities of the state convenient access to effective means of public transportation at a reasonable rate. I don't think that access which is in fact not access, which can't be used would constitute "effective means. But the general gist of my amendment is to make this a legislative responsibility to flesh out, rather than having the courts flesh this out by a series of uncoordinated law suits.

MS. JONES: There is a second question, if I may. Could I ask Delegate Hilda Mason what the city provides for now for the handicapped?

CHAIRMAN FREEMAN: Delegate Hilda Mason.

MS. MASON: As you know, the District of Columbia is one of the jurisdictions involved in the compact, the Washington Metropolitan Area Transit Authority, and I serve on that board along with three other people from the District of Columbia. Each jurisdiction prescribes what it wants to pay for and the District of Columbia, along with other jurisdictions, do provide some services though not enough services for handicapped residents in the District. They provide some lifts, some small buses and we are working on that issue now, but it does mean that we are a part of the compact, not just the District of Columbia by itself. But anything we order separate, we have to pay for.

CHAIRMAN FREEMAN: Is there any further discussion of the amendment?

All those who are in favor of adopting the Schrag amendment, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: Opposed?

(No response)

CHAIRMAN FREEMAN: Abstensions?

(No response)

CHAIRMAN FREEMAN: The amendment is adopted.

MR. CROFT: Delegate Love?

MR. LOVE: You have the term "public transportation" here. At least one mayoral candidate has proposed that we turn public transportation back to the private companies, that they can do it more efficiently and effectively at a cheaper rate. Would this term "public" allow us to have our transportation system operated by a private operator?

MR. CROFT: For the record, I think that the words "public transportation" would be -- I would like to ask the opinion of legal counsel. We didn't discuss that in the committee.

MR. THOMAS: Could you repeat the question?

CHAIRMAN FREEMAN: Delegate Love, could you repeat your question.

MR. LOVE: The way it reads, it says, "provides to all residents and all geographical communities of the state convenient access to effective means of public transportation at reasonable rates." If we decided at some time to allow a private operator to provide bus service, as we have had in the District in past years, would that still be allowed when we use the term "effective means of public transportation"? Does "public" not necessarily mean state at all?

MR. THOMAS: I would like to hear some more discussion first. I'm sorry.

CHAIRMAN FREEMAN: Delegate Cooper.

MR. COOPER: I am glad that point was raised. I would like to speak against this section and warn my fellow delegates to look out, this is but another stitch in the entire article. The word "state" appears in this article, in this section three times.

MR. SCHRAG: Madam Chair, a point of order. We are not debating the question. We are asking a question and the question has been called.

CHAIRMAN FREEMAN: No, the question has not been called on the entire--

MR. SCHRAG: Yes, the question was called on Section 1. There was a question answered as the body has been properly voting for the --

CHAIRMAN FREEMAN: We were voting on the Schrag amendment. As far as I know, the question has not been called on Section 1, and I rule that way, even if somebody has called for it.

MR. COOPER: Thank you, Madam Chair. As I was saying, not only does the word "state" appear three times in this short section, but the word "public" appears twice, and I think we had better watch out because this particular section is leading us down a very narrow path in which we will have a state run by and for the state. The people will not have a participatory function within the state if we adopt these several articles, so I beg my fellow delegates to please vote this section down because it is again a very dangerous section if we adopt it.

MS. MASON: Madam Chair.

CHAIRMAN FREEMAN: Delegate Mason.

MS. MASON: I thought the government was of the people, for the people and by the people and I thought the state is just that and I don't understand what the delegate is saying.

MR. SCHRAG: A point of order, that is out of order.

MS. MASON: I made a point of information.

MR. COOPER: I will respond to it, if you like.

CHAIRMAN FREEMAN: There are several delegates who wish to speak and I think we should just acknowledge that we are in fact debating the section.

Delegate Long.

MR. CROFT: A point of order.

CHAIRMAN FREEMAN: Delegate Croft.

MR. CROFT: A point of order. I have no problems with the debate on the article. What I do have is a question was asked by someone and legal counsel was attempting to answer the question and I would like to know whether we have answered the question, and if we have answered the question to the satisfaction of the delegate, then we can go on to debate, but that hasn't been --

CHAIRMAN FREEMAN: Legal counsel was not prepared to answer the question. He was asked and --

MR. CROFT: Then I would like to speak for the majority of the committee as the Chair in terms of what our intent was.

CHAIRMAN FREEMAN: I did not see your hand up, and that is why I did not call on you.

MR. LONG: I will speak to the substance of the question.

MR. CROFT: I will --

CHAIRMAN FREEMAN: Delegate Long, are you suggesting that you can answer the question that was raised? If you can answer the question, you have the floor, otherwise I will give the floor to Delegate Croft.

MR. LONG: I have an answer but I don't know if it is the answer.

CHAIRMAN FREEMAN: All right, you --

MR. COOPER: A point of order. The person can only speak to the motion and not to the legal counsel's answer, only to the motion on the floor.

CHAIRMAN FREEMAN: I am calling on Delegate Long because a question was asked and he says he can answer it. He is not out of order if I call on him and then I will call on Delegate Croft.

MR. COOPER: He is out of order because he is not of the majority. Only the majority has the right to speak again.

CHAIRMAN FREEMAN: The motion on the floor is to adopt Section 1. A question was put to legal counsel. Legal counsel requested that he not answer the question at that moment and have further discussion.

MR. COOPER: The rules that the only one who can answer the question is those who are on the committee.

MR. COATES: A point of order.

CHAIRMAN FREEMAN: Delegate Coates.

MR. COATES: A point of order. The point of order is the correct understanding of the general counsel's questio or reluctance to answer. As I understand the position of the general counsel was not that he does not know the answer to the question. The position is that he does not know the question and I submit that the proper order is to have the question raised again by Delegate Love so that counsel could then be in a position to reply.

CHAIRMAN FREEMAN: Thank you, Delegate Coates.

Delegate Long, would you please repeat your question.

MR. LOVE: My question was when you use the term in line 4 "convenient access to effective means of public transportation," does that mean that that system could be state or privately owned or only state owned?

CHAIRMAN FREEMAN: Mr. Thomas.

MR. THOMAS: It appears to me that the way -- and I hope this is answering your question -- that the way public transportation is used here, it implies state controlled transportation. However, I think we need to defer to the committee to see what their intent was in writing this. That would maybe clear things up.

MR. CROFT: Madam Chair, in speaking for the committee -- and I would like to remind the Chair that it is the committee who does designate; I would like to also remind the Chair that members of the minority do not have a right to comment on the report issued by the committee, and this is a question dealing with our language and our intent.

We have used the words "public transportation" as a generic term. Before the government in this jurisdiction acquired the transit line, it was still called public transportation. We are using it in its generic sense, you know, in that sense.

CHAIRMAN FREEMAN: Is there any other discussion on this section? Delegate Long.

MR. LONG: The plain grammatical construction of this long sentence is that there are two equal and independent clauses separated by the word "and." Under the normal rules of grammar, those two clauses are independent and independent of meaning. The first clause refers to public transportation and the second clause refers to a state policy which again applies to either public or private transportation. So I would agree that there is no concern here, that Delegate Love has no concern about the ability under this section of private transportation to be utilized to provide what is stated in the second clause of the section.

CHAIRMAN FREEMAN: Is there any other discussion of Section 1?

(No response)

Are you ready for the vote? All those in favor of adopting Section 1 as amended, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRMAN FREEMAN: Abstensions?

(No response)

CHAIRMAN FREEMAN: The section (Section 1) is adopted.

Delegate Croft.

MR. CROFT: Madam Chair, I move the adoption of Section 2, Utilities.

CHAIRMAN FREEMAN: Is there a second to that?

MR. : I second it.

CHAIRMAN FREEMAN: Are there any minority reports for this section, Delegate Croft?

MR. CROFT: Not on the Corn.

CHAIRMAN FREEMAN: Okay. I believe I have an amendment from Delegate Schrag. Excuse me, there is in fact a minority report to this section.

MR. CROFT: Yes, I'm sorry, I didn't see it because it goes to another page. Yes, there is, page 7 -- on page 8 -- but it says here page 7 and 8, Section 3, Energy. I do not have a minority part --

CHAIRMAN FREEMAN: Could the Secretary please read the minority report.

MR. BRUNING: Section 2(a) --

MR. CROFT: I'm sorry.

MR. BRUNING: -- line 15 on page 6 and lines 1 and 2 on page 7 omit.

MR. CROFT: I'm sorry.

MR. BRUNING: Section 2(a) shall now read, "Utility services shall be provided at the lowest reasonable rates to assure adequate, efficient and reasonable services."

CHAIRMAN FREEMAN: Is there a second to the minority report? Is there a second? Is there a second?

MR. : I second it.

CHAIRMAN FREEMAN: It has been moved and seconded that we in Section 2, subsection (a), shall read as follows: "Utility services shall be provided at the lowest reasonable rates sufficient to assure adequate, efficient and reasonable services."

Is there discussion on this motion? Delegate Schrag.

MR. SCHRAG: Is that an amendment or a substitute?

CHAIRMAN FREEMAN: I believe it is an amendment.

MR. SCHRAG: Then, Madam President, I would like to move that the amendment that I sent to the desk as a substitute be considered, because it relates to the same issue.

CHAIRMAN FREEMAN: Could you read your amendment, please, Delegate Schrag.

MR. SCHRAG: I move as a substitute for this minority report the following: On line 15, delete the word "so" in line 15 -- may I have your attention, delegates, please?

CHAIRMAN FREEMAN: Delegates, we are on Section 2, Delegate Schrag has an amendment to the amendment which is on the floor.

MR. SCHRAG: It is a substitute for the amendment on the floor.

CHAIRMAN FREEMAN: A substitute.

MR. SCHRAG: In line 15, delete the word "so" and then turn the page and put a period after the word "rendered" -- I'm sorry, a semicolon after the word "rendered" and delete the rest of that phrase. In other words, delete "as to take ratepayer's property."

CHAIRMAN FREEMAN: Is there a second to that?

MR. : I second it.

CHAIRMAN FREEMAN: Would you repeat it again, Delegate Schrag?

MR. SCHRAG: Let me repeat the substitute motion. On line 15 of page 6, delete the word "so" and then on the next page, after the word "rendered" put a semicolon and delete the remainder of lines 1 and 2.

I would like to explain my amendment briefly. The intention of the committee I think is a reasonable and a good one. The intention of the committee is to ensure that utilities don't --

MR. NIXON: Madam Chairman --

MR. SCHRAG: Do you have a point of order or something, Delegate Nixon?

CHAIRMAN FREEMAN: Delegate Nixon, I have your hand. I see you, Delegate Kameny. Can we have quiet in the room, please.

Delegate Schrag.

MR. SCHRAG: The committee's intention I think is a reasonable one and that is to ensure that the utilities don't get away with unfairly excessive rates, and I think the committee has gone overboard slightly. The committee's language I would keep, which I do not propose to delete reas "Utility services shall be provided at the lowest reasonable rates sufficient to assure adequate, efficient and reasonable services; and such rates shall not be excessive for the services rendered." So far, so good.

Where I think the committee goes overboard is in the phrase "as to take ratepayer's property." I suggest that that is a phrase that really cannot be understood because the ratepayer is paying for his electricity or gas through property in the first place, he is paying for it in many cases through income, through wages and so forth. The committee is trying to make some kind of an analogy with eminent domain and the concept of the taking of property, but I don't think it is quite apt here.

A second and more serious point, assuming that the requirements of the first part of this subsection are met, that the utility services are provided at the lowest reasonable rate, and that they are not excessive, what more is the committee asking? How can the ratepayers be charged anything lower than what is already the lowest reasonable rate? Anything lower than the lowest reasonable rate is going to drive the utility out of business and then no consumers are going to have any electricity.

So I think this concept of saying it three times cumulatively just doesn't quite work. Finally, I would like to read the general counsel's report on this section, which unfortunately was not available to the committee until fifteen minutes before this evening's session and therefore the committee didn't have time to take it into account and to work it into their article, but I think the general counsel is quite correct when the general counsel says "The phrase 'as to take ratepayer's property' seems to need further definition or revision. The committee's report speaks of establishing 'a property right for raepayers in cost efficient utility service.' Further comment on this section is reserved until counsel has heard from the committee."

Well, counsel did not have time to confer with the committee or to work with the committee, so I suggest that the committee's objective would be fully accomplished in keeping the first two-thirds of this section and having utility services at the lowest reasonable rates and at rates that are not excessive, without confusing matters by talking about a taking of ratepayer's property when we really don't know what that means or what that would amount to when the service is already at the lowest reasonable rate.

Thank you.

CHAIRMAN FREEMAN: Delegate Kameny.

MR. KAMENY: I concur with what Delegate Schrag has said. However, I want to ask him, in that case what is added at all by the clause "and such rates shall not be excessive"? If they are "the lowest reasonable rates sufficient to assure adequate, efficient and reasonable service," then by definition they are not excessive, so one cannot have the other and therefore why bother, why not in fact put the period after "services"?

MR. SCHRAG: Thank you, Delegate Kameny. The reason I left that phrase intact was frankly to do as little damage as possible to the committee's language, to make the minimal changes possible to make this section readable and workable, and I think the clause is redundant but does not harm. I think the clause that I am proposing to strike may do some actual harm in that it does not have any meaning and I think the words that are used there have no precedence in any state constitution.

CHAIRMAN FREEMAN: Delegate Croft.

MR. CROFT: Yes, I would like to respond to this. This is a technical matter which we have been working on -- first of all, I would like to say that we have worked with Brian Letter, who is the --

CHAIRMAN FREEMAN: Excuse me, Delegate Croft. Would somebody please go out and see if there is anything going on out in the hall? Thank you.

Delegate Croft.

MR. CROFT: First of all, I would like to say that this article has been drafted with the help of at least -- this article has been drafted with the assistance of --

CHAIRMAN FREEMAN: Delegates, unless there is some need for us to all leave, can we continue debating this section?

MR. CROFT: If I can, I would like to have the delegates' attention. This is a technical matter. I understand the problems that Delegate Schrag has with this section. We have talked about them over and over again. However, I would like to say that we have worked on this article with Brian Letter, who is the People's Counsel, and I would like to take it section by section in terms of -- first of all, there is a typo, the word "payers" should not refer to individuals, it is the word "payers'" which is plural.

CHAIRMAN FREEMAN: What line are you on, Delegate Croft, for that?

MR. CROFT: "ratepayers."

CHAIRMAN FREEMAN: Thank you.

MR. CORFT: It should be payers', plural. I would like to take it this way: First of all, what we are attempting to provide in this section is we are attempting to provide an equal relationship between consumers and large corporations, monopoly corporations. Currently, based upon a Supreme Court decision, Holt v. Bloomfield, the public utility company has a constitutional right to a rate of return on its investment that is not confiscatory. Utility companies have that right, that is their property right.

Let me explain what we mean by property right. A utility company is a private corporation. They are owned by stockholders. Stockholders use income to buy stock and their income that they use to buy stock is considered their property. That is the property right that Holt v. Bloomfield protects, the income that is used to purchase stock, and as that income is used to purchase stock, that is, that has been defined in Holt v. Bloomfield as profit.

Now, let's go to what we mean by property. First of all, we are not talking about an individual ratepayer, we are talking about ratepayers, plural. We are talking about ratepayers, a class called utility ratepayers. We are arguing that the income of those ratepayers purchases a service, and that it is the purchase of that service with their income that we are providing them with a property right, a property right equal to the property right of those who buy stock, and that is clear.

Now, what we are saying is that consumers and again it is ratepayers as a class, the ratepayers as a class have an interest in public services being delivered in a non-confiscatory manner, and we mean the rate, we mean the rate, the rate is looked at in terms of class.

Now, we have drafted this for a particular reason. We have drafted this for a particular reason because of the relationship between the utility corporation, which is a private monopoly, is one of inequality in terms of the ratepayer. They have a constitutional right, they have a constitutional right to a rate of return. The consumer has no constitutional right. What we are trying to do is provide the consumer with a constitutional right.

Now, just bear with me for a second. What it does is this, and I just want to say what this property right does, and let me read it to you. Just as property rights of the utility company is a property right belonging to the investor as a group, the ratepayers' property right is one belonging to the ratepayers as a group. Investors in a group can challenge the rate level set by a commission, but their challenge is not based upon the effect of that rate level upon any one investor's income, and that is essentially what we are trying to provide. We are trying to provide a parallel right for the consumers as a class.

CHAIRMAN FREEMAN: Thank you, Delegate Croft.

Delegate Jones.

MS. JONES: I would like to speak to the point of utilities. I appreciate the remarks made by others, but I come out on the side of the consumer and he ought to come out on the side of the Public Service Commission, which is an advocate for me so that I can cope.

When we talk about equal rights and who is first of all equals, the investor has become two people, he is the investor and the consumer and when we talk about him getting a fair return on his investment and not something which is below a confiscatory line, it ismy understanding that the confiscatory line is equal to the interest rate in the jurisdiction which seems to be changing every day in this jurisdiction.

But I maintain that his investment dollar is supposed to take the same crippling in inflationary times as my pay check, and if his investment dollar is his property then my pay check that I give to the utility, for gas and whatever, the gas company and the telephone company, is my property and I have the same expectations for my property and he has for his.

The other problem here is this: When the rates are excessive -- and the rates are excessive -- the rates are excessive because the utility companies have a plan that you pay for the risk that they want to take in building something in the future and you pay the full amount and they don't have to go to the bank and get that money. Am I right there?

My problem is this: There is no equal between me the consumer and they the investor, and they have a two-fold interest and they win on both sides because they pay the excessive rate and they get it back on the investment side, and I have no access to that because I don't have that kind of money.

There is one other thing that I want to say here. The U.S. Constitution talks about the public service commission for every state in the union, and as I read the report, as I read the report they clearly say that the public service commission is the commission to regulate the utilities, not rubber stamp their applications as they come before the commission, and we have not had that luxury here in this city.

Now, I have one other thing to say about this matter and then I will set down and let others speak. The consumer is lost below the confiscatory line every day and nobody says anything about that. When he becomes 60 and there is mandatory retirement and he gets a small portion of his income from social security, he is below that and he still pays the same rate to the utility company. I am also saying there is no competition there, the regulation of the utility companies when they rip me off and somebody happens to catch them, you get, "Oh, we made a mistake, the consumer did it, I've got your money and I will give you a credit instead of giving you your money back." Nobody regulates that. Nobody regulates the fact that the law says if I have a medical certificate that says to the utility company, you can't cut it off for 21 days and I go to the gas company and they say, no, we can cut it off and you can die. Those things to me need to be addressed and they need to be addressed somewhere where there is some teeth. It is the consumer, not the investor, but the consumer that should be equal to the investor and I feel very strongly about this because I hear it all day long and I have a gut feeling about poor people, old people and people who are helpless, and it bothers me that we have a problem of protecting those people in the constitution of this state.

(Applause)

CHAIRMAN FREEMAN: Delegate Long.

MR. LONG: I must -- because this is so close to home to what I do for the District of Columbia, I can't take any sides on the issue before us except to say that there is -- and I think everybody would agree -- a normal constitutional construction in this section. I believe that it is based on, I am not sure, the 13th or the 14th Amendment, which has to do with property rights -- the 14th Amendment. It is an attempt to attach the ratepayers' rights to the 14th Amendment of the U.S. Constitution.

It is I believe probably unique in the United States and for that reason, because I am against all innovation in this constitutional document of any kind on a strictly strategic basis, that the more you innovate the more enemies you are going to collect. Now, it is going to be a cheap shot for people that are opposed to this idea, or it is going to be a rallying point for people that support this idea.

What we need -- I am being sarcastic -- is more controversy about this little constitution. This whole section essentially is redundant. There is a statute now which covers the rates which utilities can charge, that provides for -- of the public service commission -- that provides for the Office of People's Counsel, those laws are not going to disappear when this constitution goes into effect. We are just loading into the constitution with unnecessary verbiage and also some unnecessary baggage that is going to be a flash point, so I urge you to vote down this section and the succeeding two sections.

CHAIRMAN FREEMAN: May I remind delegates what we are debating right now is the Schrag amendment to ubsection (a). We have Cooper, Coates and Jordan. Delegate Cooper.

MR. COOPER: Well, because I am not close to this issue, I will take a side. I would like to also say that I would like to associate myself with some of the comments made by Delegate Schrag. Not only did Delegate Schrag hit the nail on the head, he drove it deep into the wood when he said that if this article were adopted as it were, without his amendment, it would effectively -- and it would, it would rive the public utilities or privately owned utilities right out of business. It would make it so impossible for them to stay in business because of these excessively low rates.

Not only that, if you tie this -- the plot thickens, folks -- if you tie this to the eminent domain that was mentioned, there is always a subliminal mention, as was mentioned, of taking ratepayers' property. It seems that the mentality of this committee just could not get away from that. And I am warning you, folks, if you adopt this article like we have been passing the rest of them, we are going to have a very fast constitution and we are going to regret it and we are going to feel that regret at the ballot box. I urge my fellow delegates to vote up the amendment of Delegate Schrag and vote down this entire section.

CHAIRMAN FREEMAN: Delegate Coates.

MR. COATES: Thank you, Madam Chairperson, Vice President Three.

(Laughter)

The committee is grateful for the memoranda from Delegate Schrag, dated May 10, 1982, subject, economic development draft articles, which includes in pertinent part an item 10 that ends in the following way: "In short, once you have said on line 13 that rates must be set at the lowest reasonable level and even at that lowest reasonable level, some people can't afford to pay, I don't know what more is supposed to happen."

Well, the committee does know what is to happen. First of all, it is not to allow that free utility services be provided for persons who cannot afford to pay for the service. The provision of the committee does not provide that freedom from the payment for services.

What does happen is that that group known as utility ratepayers, with the right provided in the article of the

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committee has a right as a group to challenge the level set by the utility commission to assure that that level has been determined to provide the lowest reasonable rate. What does happen is that they challenge it on the basis heretofore not provided.

When you look at one end of it, we see that the utilities are allowed cost plus a reasonable return, and if the rates which they now establish reflect costs plus a reasonable return, they are not subject to challenge. However if the committee's section is provided, no longer would it be that challenges to rates are determined on the consideration of costs plus reasonable return but rate then, if challenged, have to meet the test that they provide adequate, efficient and reasonable services at the lowest cost, which is another standard by which those rates are to be considered.

In short, on the one hand, because utilities can put in place capital improvements and calculate them in the costs, capital improvements over which the ratepayers have no control, they now areallowed to pass those costs on, under the concept of costs plus a reasonable return, and they cannot be held to establishing rates below those costs because such establishment would be confiscatory.

What the committee provides in summary and in final coment is to ensure that when rates are established -- a case in point, if the utility company proposes to provide energy at something less than the cost efficient process, let us say if they shifted from one type fuel to the other, which had other cost factors in it, then they could not establish that energy was provided at the most reasonable rate.

So we protect the ratepayer by providing another standard to determine utility costs and the costs of that balance provided for the ratepayer and we urge the adoption of the committee's recommendation.

CHAIRMAN FREEMAN: Delegate Jordan.

MR. JORDAN: There is a fundamental issue here. about the service as to what role we are going to take in the historical argument of property rights versus individual rights. I think we come at this point to face the issue squarely.

I realize that this has a lot to do with the question about water bills. There is not an individual who would not for one moment tolerate the inefficient operation of the District agency and facility which provides us with water and sewage. I don't see much distinction between the government providing us water and sewer service and the private industry providing us with other kinds of service. The only question is where someone made the argument that we will provide the utilities. I don't think that is true. I think -- first of all, I don't like the idea of we giving the kinds of state right to ensure their returns even when you and I are not able to keep our costs -- I mean there is no way of assuring that they will have to absorb any costs.

I feel sorry when I think about this city when I was coming up as a kid and there were only a few stations for electricity and the utilities decided they should increase its capacity and they went out and build at Chalk Point, and it pay for that new facility by levying a tax on the users of that electric energy. That is the only way we can define it, is a tax was levied against us and we didn't have the money to pay.

Now, we have no problem understanding that you and I and all pay for these new things, and there is no problem understanding that we are paying $25 million for the rennovation of the backfill of the reservoir. We all understand, the government today, we are going to take your money and improve these facilities, expand them. But somehow we lose sight of that when the utility takes our money. We bring in all of these fallacious arguments about the right of investors. I would feel comfortable if their initial investment was all that they made their return on, but they are making capital improvements that you and I pay for and then they turn around and say I don't want a rate of return on what my original investment was, I want the rate of return on what I initially invested plus what the people in this city or in this jurisdiction have paid to increase the facility for those services.

One last point: The utilities -- at least one of them in this town, built at such a large capacity that it has excess capacity now and it is selling some of this excess generated energy to the grids, the northeast grid. So what I am trying to say is not only did we fund what is necessary for the adequate energy needs of this city, but we funded something beyond that.

Now, I think it is time that we addressed this kind of problem, and we are doing it. Let's don't get caught up with this question about we can legislate, we have done it in other places. I have seen a lot of votes on other articles where the legislature comes out now with a very fundamental, crucial issue and we want to fall back and say it is legislation. Well, we have already set the precedent. This language is a critical matter and I think we need to attack it head-on.

I don't know what you mean when you say the ratepayers' property right. I don't know what that means. If I am going to accept what the committee says and it is going to protect my interests, it is going to ensure that the public utilities are going to become responsible and they are no longer going to be controlled by the investors of this town who own construction companies that build the new facilities that they want, or they are no longer going to be controlled by the energy companies in the town that sell them oil, coal to the utilities that they are going to use to generate the electricity. As long as we keep that in mind, I think it becomes very easy for us to oppose this, so I will oppose it and I would hope that you would vote against the Schrag amendment.

CHAIRMAN FREEMAN: Okay. Delegates, can you please restrict your comments to new comments, as we have debated this issue extensively.

Delegate Oulahan.

MR. OULAHAN: Madam Chairperson, the legal discussion I have heard and the creation of this new constitutional right is the legal world turned upside down. The 14th Amendment does not create any property right to be protected from excessive rates. The 14th Amendment says the taking of property without due process of law. My own view -- and I am just a lawyer that has knocked around this town for about thirty years and know how what this constitutional problem is, as this section is written constitutes the taking of property from the utility companies, it will be declared unconstitutional, and I can think of nothing more mischievious than creating some kind of idea like this.

Thank you.

CHAIRMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: I don't think Delegate Oulahan was speaking to my amendment. I think he was speaking to the section as a whole.

CHAIRMAN FREEMAN: Thank you, that is correct. Remember, we are debating only the Schrag amendment, which is an amendment to subsection (a).

Delegate Holmes, did you still wish to speak?

MS. HOLMES: I am against the Schrag amendment because I have been sitting here and I have tried to figure out -- when I get my utility bill, I have not been able to find out why I have to pay so much for coal to give me some electricity in my house, and I can go down my street and count a hundred houses, and where my bill will be $25 just for the coal to push some heat in my house from electricity, and you go and pay the same thing for your gas, and I think that is just out of place and somebody needs to put something in to protect not only me but the elderly. I see them -- and it is very bad because you have to pay $25 or more to run your oil tank and if you add anything, the utility company -- I just say in my block alone, which has over a hundred houses in it, and if everybody pays $25 for fuel, for coal to give them some electricity, then you count every house and see how much the utilities are getting over on the pay, and I think we should have some kind of protection for what we are doing out here.

CHAIRMAN FREEMAN: Delegate Rothschild.

MR. ROTHSCHILD: I would like to speak basically against the Schrag amendment and in favor of the Corn amendment, and I will explain why.

MR. MARCUS: The Corn amendment is not on the floor.

CHAIRMAN FREEMAN: Well, his is a substitute to the Corn amendment. It is a substitute for the Corn amendment and he is speaking for it and against the Schrag amendment.

MR. ROTHSCHILD: I am speaking against it, in favor of the other one. The reason I am speaking this way is because although I agree that there are really economic problems in this city, in this country, throughout the world and a new economic order is required. I think we have to be somewhat realistic as to what we would be able to accomplish in our constitution.

I think we want to show concern for the fact that utility rates are driving people to the wall and really hurting the consumers at times. But nevertheless, the history of this city has been that there has been some concern shown and there has been some process of construction set up, and a procedure by which there is some regulations so that reasonable rates or at least we are going in the direction of somewhat reasonable rates are there.

I think the issues are very complicated. I don't think we can solve it in our constitution. I think it requires more study, more legislation, more looking into in the direction of easing some of the problems, economic problems that people throughout the city have. However, I don't think that this constitution is the place to solve all of those problems, and I think by voting down the Schrag amendment and supporting the Corn amendment we are basically going in that direction and we are not trying to throw in so much detail that our constitution will not have a chance for passage.

Thank you.

CHAIRMAN FREEMAN: Delegates, shortly --

MS. HOLMES: I call for the question.

CHAIRMAN FREEMAN: Unfortunately, you are out of order, but I would like to urge delegates to vote on this because surely everybody will have spoken and you might want to speak by raising your hand.

Delegate Brian Moore, you did have your hand up.

MR. B. MOORE: I would like a 30-second close at the appropriate time.

CHAIRMAN FREEMAN: Delegate Brian Moore, do you have any new discussion?

MR. B. MOORE: I will withhold my comments until the main motion is up.

CHAIRMAN FREEMAN: Thank you. Delegate Charles Mason.

MR. MASON: I suppose the Schrag amendment. I agree with much of what Delegate Jordan said, including his remark that he didn't understand what the last few words meant, because I agree absolutely with that and that is why I want to strike them. And I believe that is probably why Delegate Schrag wants to strike them.

CHIARMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: Thank you, Madam President. I will be very brief. I am a little sorry that my amendment came up as the first amendment in the section on utilities because it seems to have caught all the flack that is directed not at the amendment but at utilities.

I have sensed from the comments of some of the delegates, such as Delgate Charlotte Holmes and Delegate Jordan, that they are very distressed at the high rates that utilities charge and they regard some of those rates as unfair, and I say to them more power to them. But that is not what this amendment is about.

This amendment is about striking a few words and I do not think bear the weight of interpretation that Delegate Coates gave them. Delegate Coates talked of investments in capital property and so forth. Fine, but this amendment has to do with the taking of ratepayers' property, it doesn't talk about capital investment, it doesn't use words that have a meaning that I can ascertain.

And be as angry as you like at utilities, and let's do what we want to about utility rates, but this amendment isn't the place to vent about utilities. Thank you very much.

CHAIRMAN FREEMAN: Would the committee like to speak one final time against the amendment or have you argued it sufficiently?

MR. CROFT: Yes, I would like to make clear several points. One is that it has been rather rhetorically mentioned that this takes property away from the public utility themselves. It does not take property away from them. I would like to go back to the point where I do disagree with Delegate Schrag on a technical point, and I must be honest that I do defer to the person who is the current counsel for ratepayers of the city, and I would argue that indeed the property in this sense means something very clear. The Supreme Court has indeed ruled what property means in this sense.

Property means investment in a service and that is what property means. We are basing this on Holt v. Bloomfield, in which Holt v. Bloomfield defined what a utility company is and they talk about property rights and the property rights are the money that an investor uses to buy stock. What we are doing is simply this: We are giving the consumer a property right, and his property right is the income that he pays for a service and we are also providing a standard.

Currently the only standard by which rates are based upon is the cost, is cost incurred by the public utilities. What we are saying is we are providing the consumer with a constitutional right to not have his or her -- as a group to not have their property confiscated, and that will become the standard by which a utility commission will in fact determine whether there will be a rate increase or not a rate increase.

CHAIRMAN FREEMAN: Thank you, Delegate Croft.

MS. MASON: Madam Chair?

CHAIRMAN FREEMAN: Do you have a point of order, Delegate Mason?

MS. MASON: No, I have a question.

CHAIRMAN FREEMAN: May we vote on this amendment, please, delegates?

MR. B. MOORE: I have a point of inquiry.

CHAIRMAN FREEMAN: Delegate Brian Moore.

MS. MASON: Well, what is the difference of an inquiry and a point of inquiry?

CHAIRMAN FREEMAN: I guess there really isn't any difference. Delegate Mason. We have been debating on this for a half hour, delegates.

MS. MASON: Madam Chair, we also debated it in committee. I would like to ask what is it in the wording that is insufficient to protect people who are buying from utilities --

MR. CROFT: It is --

MS. MASON: Excuse me.

CHAIRMAN FREEMAN: Delegate Croft, let Delegate Mason finish, please.

MS. MASON: Considering that the motion says the utility services shall be provided at the lowest reasonable rates sufficient to ensure adequate, efficient and reasonable services and such rates will not be excessive for the service rendered -- I don't understand what more we need.

CHAIRMAN FREEMAN: Delegate Croft.

MR. CROFT: What more we need is there to be a standard, and let me refer to the comments again by Brian Letter, our research assistant. I appreciate Delegate Schrag's amendment. I know the reason why he offered it. The problem is that his amendment does not provide a standard.

What we are saying is this -- what is the standard? We are saying the standard is the property right of the ratepayer, and that is very important and, again, I want to bring back the question again. The public utility companies themselves have a constitutional right based upon their costs incurred and we are saying consumers also must have a right and it is indeed the non-confiscation of their property that will be the standard.

The point I am trying to make is Delegate Schrag's amendment does not set a standard. Ours does. The standard is the rate shall not be so excessive as to take taxpayers' -- ratepayers', I'm sorry, ratepayers' property -- it is getting late, and I apologize.

MS. MASON: When you say "property," are you talking about money?

MR. CROFT: Property in this case -- again, let me go back to the distinction of property, we are going back to Holt v. Bloomfield. Property -- when they talk about you can't confiscate a utility's property, they are referring to the investors and the inestors' property is based upon their income which they use to acquire stock.

In this case, and let me be clear about this and let me read, income of ratepayers as a group is viewed in the same way as investment capital. The money used to pay for utility services, if an investment in an essential service, and would be otherwise available for investment in other uses, conceptually the property of the ratepayer parallels that, of the investors in the utility.

So what we are saying in this case is that the income of the ratepayer is the property that the -- the income of the ratepayer is used to acquire a service, in other words, just as money is a vehicle to get the stock, the income of the ratepayer is a vehicle by which to make the service, get the service.

MS. MASON: If the rates are the lowest reasonable, then who will pay the rates if the user can't pay them? Does the state have to pay them?

MR. CROFT: Again let me go back to the point. Again, I think it has been stated clearly by Delegate Coates and again, the use of the word, it is "payers," We are not talking about the individual, we are talking about a class, the ratepayers themselves. We are talking about the class of ratepayers and we are saying this, we are clearly saying that the ratepayers, that the rates set cannot be confiscatory of ratepayers' property, of ratepayers' property. We are not referring to individuals.

MS. MASON: We have to know, are we saying that if the rates are the lowest that we can get, the very lowest for the services rendered, are we then saying that either the utilities will go unpaid or that the state will pay or what?

MR. CROFT: No, what we are saying is essentially this -- it is again going back to the --

CHAIRMAN FREEMAN: Delegates, may we have some quiet in this room?

MR. CROFT: -- can we go back to the technical question. The technical question is this: Currently the rates are set on the basis of how -- you know, it is again what is lowest and what is reasonable. The only standards for lowest and reasonable now would be the way that the public utilities calculate their costs, and again it is the public utilities who would define what would be reasonable and lowest.

With our wording, it is not the public utilities and the way that they reap their profits that would define what is lowest and reasonable. What would define what is lowest and reasonable is whether it is confiscatory of ratepayers' property, weighed with the constitutional right of the utility companies to get a profit.

Currently -- the point I am trying to make again is simply this: I understand Delegate Schrag's amendment, it will not provide, it will not accomplish what he wants to accomplish, we will still be left with the existing situation.

I want to drive home this point: Why can property have the constitutional protection and why can't human beings? And that point I want to drive home again. Why can property have a constitutional protection and why can't human beings?

CHAIRMAN FREEMAN: Delegate Coates, can you try to answer Delegate Mason's question?

MR. COATES: Yes, I can. It is the committee's view, in short, that although a rate of return is reasonable, that rate is too often calculated on unreasonable costs.

To repeat, it is the committee's view that too often public utility commissions set reasonable rates but those reasonable rates are calculated on the basis of unreasonable costs, and when that is done, it is the committee's view that this is confiscatory of ratepayers' property because they are paying more than they need pay.

If the committee's provision is adopted, instead of the standard being in setting rates costs plus a reasonable return, the standard will determine whether utilities have put in place or not put in place the costs at the lowest level such that when you calculate the return on it it is not an excessive return, that is, it is not a reasonable return based on unreasonable costs.

Now, would a ratepayer who had no money at the end of the money be exempted from paying his utility bill? The answer is no. If it is determined that unreasonable costs have not been factored into the base on which the reasonable return has been calculated, then that ratepayer, whether he had no money or not, would be required to pay what his bill is. It does not exempt anybody from paying their bill. But on the other hand, if it is determined that unreasonable factors have been put in the cost base on which the reasonable return has been calculated, then not only that particular ratepayer but the whole class of them have some course of action against the utility company, because they have been in violation of the standards by which rates are determined.

CHAIRMAN FREEMAN: Delegates, are we ready to vote on this?

MS. GRAHAM: I would like to hear some information from the attorney.

CHAIRMAN FREEMAN: I was just about to call on him. He indicated he had something. Mr. Thomas.

MR. THOMAS: Just one point. This is a very complicated issue and I just hope that I can simply just what the committee is trying to do in terms of this article. The Supreme Court has ruled that a utility commission cannot charge or cannot order utilities to charge rates so low as to confiscate the property of the utility company, of the investors. Mr. Croft has described what the property is.

All they are trying to do is say, okay, if we can't charge a rate so low that it will confiscate the investor's property, then you can't charge a rate so high that will confiscate our property. Right now what they are saying is that the Schrag amendment does not define what is high. It merely says the rate cannot be excessive. What they are saying is that what is excessive is when it gets to the point of confiscating my property, that is what is excessive. That is in an attempt to simplify it a little more.

CHAIRMAN FREEMAN: Thank you, Mr. Thomas. That was very helpful.

All those who are --

MR. ROTHSCHILD: Just a moment, Madam Chairman, just a point of personal privilege.

MR. JACKSON: I call for the question.

MR. ROTHSCHILD: I said I was voting down the Schrag amendment, I meant to speak and say I was voting up, it is the same as the Corn amendment. Thank you.

CHAIRMAN FREEMAN: All those who would like to close off debate, please say "aye."

(A chorus of "aye.)

CHAIRMAN FREEMAN: All those opposed?

(A chorus of "nay.")

CHAIRMAN FREEMAN: I think that was a two-thirds voice count. We are voting on the Schrag amendment which is to Section 2, subsection (a), to read as follows: "Utility services shall be provided at the lowest reasonable rates sufficient to assure adequate, efficient, and reasonable services; and such rates shall not be excessive for the service rendered."

All those who are in favor of the Schrag amendment, please raise your hand.

(A show of hands.)

MR. BRUNING: 9.

CHAIRMAN FREEMAN: All of those opposed, please raise your hand.

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN FREEMAN: Abstensions?

(A show of hands.)

MR. BRUNING: 3.

CHAIRMAN FREEMAN: The amendment loses, the vote was 9 in favor, 11 opposed, and 3 abstain.

We are now back to the Corn amendment.

MR. SCHRAG: Madam Chairman.

CHAIRMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: I have an amendment to the Corn amendment, and I don't think -- we have debated all of these issues, I don't think this requires much debate, so I will just move it and we can vote on it and dispose of it. It would add to the Corn amendment, add to the end -- the Corn amendment would end the sentence at the end of line 14.

CHAIRMAN FREEMAN: That is correct.

MR. SCHRAG: I would add the following words, "and unreasonably high rates based on excessive capital investments shall not be permitted."

CHAIRMAN FREEMAN: Is there a second to that motion?

MR. : I second it.

CHAIRMAN FREEMAN: Discussion?

MR. SCHRAG: Madam President, what I am trying to do here is to put in words exactly what Delegate Coates described was the intention of the committee's amendment, that is to prohibit the utilities from putting all kinds of extra investment in plants that are unnecessary and then charging the consumer for the investments in those plants and charging unreasonably high rates, and I suggest that this wording is more appropriate than the wording of the committee and therefore the Corn amendment as amended by this would accomplish the committee's intentions I think effectively.

CHAIRMAN FREEMAN: Delegate Croft.

MR. CROFT: Again, I think, although I understand the intent of the amendment, the amendment has the same defect as the first one. It is the absence of the standard. What would be unreasonable, what would be accepted. Again, what we are trying to say is we are trying to say that the standard shall be the property of the ratepayers, the consumers.

Again, the defect is that there is no standard by which to make that judgment.

CHAIRMAN FREEMAN: Thank you. Delegate Jones, did you have anything to add?

MS. JONES: I associate my remarks with Delegate Schrug.

CHAIRMAN FREEMAN: Thank you. Delegate Jordan, did you have something to add?

MR. JORDAN: I just want to hear the amendment again.

CHAIRMAN FREEMAN: Okay. Delegate Schrag.

MR. SCHRAG: At the end of line 14, add these words, "and unreasonably high rates based on excessive capital investments shall not be permitted."

CHAIRMAN FREEMAN: Thank you. Delegate Jackson.

MR. JACKSON: Yes, ma'am. Mr. Schrag's amendment not being acceptable to the committee, I move the question.

CHAIRMAN FREEMAN: Is there a second to that?

MS.   : I second it.

CHAIRMAN FREEMAN: All those who are in favor of shutting off debate, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: Opposed, "no."

(A chorus of "nay.")

CHAIRMAN FREEMAN: The debate is now closed on the Schrag amendment to the Corn amendment, and that reads as follows: Subsection (a) of Section 2 aould read, "Utility services shall be provided at the lowest reasonable rates sufficient to assure adequate, efficient and reasonable services, and unreasonably high rates based on excessive capital investments shall not be permitted."

All those in favor of the Schrag amendment, please say "aye."

(A chorus of "aye.")

CHAIRMAN FREEMAN: All those opposed?

(A chorus of "no.")

CHAIRMAN FREEMAN: Abstensions?

CHAIRMAN FREEMAN: A division. All those who are in favor of the Schrag amendment, please raise your hands.

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN FREEMAN: All those who are opposed, please raise your hands.

(A show of hands.)

MR BRUNING: 7.

CHAIRMAN FREEMAN: Abstensions?

MR. CROFT: A point of order.

CHAIRMAN FREEMAN: Only one person has the floor at --

MR. CROFT: A point of order.

CHAIRMAN FREEMAN: Delegate Croft.

MR. CROFT: A point of order -- the rules are -- a point of order. A point of order.

CHAIRMAN FREEMAN: Delegate Croft, you have the floor.

MR. CROFT: Fine. I'm tired. The rules are that you can only amend a section once. This is the second attempt to amend this section.

CHAIRMAN FREEMAN: No, that is not true, Delegate Croft. That was deleted.

MR. CROFT: From the Baldwin proposal?

CHAIRMAN FREEMAN: I understand it was deleted from the Baldwin proposal. I would like to start this vote all over again. You were totally out of order, Delegate Croft, at that point. We voted. I have a count of 11. I would like to start all over again.

Those who are in favor of the Schrag amendment, please raise your hands.

(A show of hands.)

MR. BRUNING: 12.

CHAIRMAN FREEMAN: All those who are opposed to the Schrag amendment?

(A show of hands.)

MR. BRUNING: 9.

CHAIRMAN FREEMAN: Delegate Jones.

MS. JONES: People had put their hands down and then they voted again and the next time people had changed their minds and the count is not accurate.

CHAIRMAN FREEMAN: Thank you, Delegate Jones. I think that is a very good point. This is the second time we have tried to make this vote.

MR. BRUNING: I counted 9 twice. Both of us counted 9 twice.

CHAIRMAN FREEMAN: Fine. Are there abstensions on this vote?

MR. BRUNING: Two.

CHAIRMAN FREEMAN: I am abstaining. Three abstensions.

MR. M. MOORE : A point of order.

CHAIRMAN FREEMAN: I would like to announce the vote. I understand there were 12 in favor of the Schrag amendment, 9 opposed, and 3 abstensions. The Schrag amendment carries.

Delegate Moore.

MR. B. MOORE: I moved against calling the question last time and I was very angry about it. I don't think that there was sufficient opportunity for people to discuss the new amendment that was put on the floor and I question whether there were two for and two against, at least two for and two against on that amendment. I would like to ask the Chair if she could check on that, how that was conducted.

CHAIRMAN FREEMAN: The proper way, if you would like to debate it, and there have not been, you could have made a point of order at that point and I could have then ascertained. But since I heard no point of order as to whether there had been two for or two against, I --

MR. B. MOORE: We have 35 on one amendment, we get a new amendment on the floor and within 30 seconds we have a vote on it.

CHAIRMAN FREEMAN: Delegate Moore, as I said, I heard --

MR. KAMENY: I move the agenda.

MS. : I second it.

CHAIRMAN FREEMAN: Delegates, we are on Section 2. Are there any more amendments? Any more discussion of Section 2? Delegate Feeley.

MS. FEELEY: I think that Delegate Moore does deserve a response so he can understand what happened. Essentially what happened on the floor, as I saw what was going on, was that the one that Delegate Schrag offered the second time was an identical amendment to the Corn amendment and would have required the same debate that was offered on the first amendment that we debated. I am sorry that some of my fellow delegates didn't see fit to follow the argument and apply that argument to the second amendment that Delegate Schrag put on the floor.

CHAIRMAN FREEMAN: Delegate Jordan.

MR. JORDAN: I just want to make this inquiry to determine if my understanding of the rules is correct. There is no requirement to permit two people to speak for and two people to speak against every proposed amendment unless, one, the question is called and, two, an individual indicates at that point that they wish to speak. Now if I am wrong, Madam Chairman, I would like for you to tell me because I am tired of hearing his argument that there has to be some debate on these various issues when if delegates would read the rules and understand what their rights are relative to the rules and then exercise their rights that are contained in the rules, some of these questions which tend to cast certain kinds of discredit upon the conduct of this convention at this point would be eliminated, and I --

CHAIRMAN FREEMAN: Thank you, Delegate Jordan. I in fact did say that to Delegate Moore, and I had just barely finished that sentence when Delegate Kameny called for the order of the day, but I will explain it one more time.

It is not mandatory to have two people speak on either side when the question is called. When the question is called, if a delegate wishes to ascertain whether or not there have been two people speaking on both sides and would wish to speak if there had not yet been two people, then you should so indicate at that point. Having heard nothing from the floor, I assumed that in fact nobody was questioning or chose to speak at that point and nobody was asking for an accounting as to whether there had been two on each side.

We are now, I understand --

MR. B. MOORE: Madam Chairman, personal privilege. I would like personal privilege, please.

CHAIRMAN FREEMAN: Delegate Moore.

MR. B. MOORE: Statements were made by Mr. Jordan and obviously they are directed toward me and I would like for the record to state that there are some people in this convention that are more skilled in parliamentary procedure than others or they are quicker at it.

All I was asking the Chair was to please be aware of that and please make every effort to accommodate the delegates that are maybe not quick enough --

CHAIRMAN FREEMAN: Now, I think you have made your point and we have certainly had a great deal of confusion over that, that issue.

We have -- as far as I understand, we still have the entire Section 2 on the floor. The Schrag amendment incorporated the Corn minority report.

Delegate Marcus.

MR. MARCUS: It is my understanding then that what is on the floor currently is Section 2(a) which is now before us is an amended version of the minority report. Right? Is that correct? It is the Corn amendment with the amendment. We never accepted that language. All we did was accept and have in front of us the Corn language with the Schrag amendment, right?

CHAIRMAN FREEMAN: We adopted the Corn language.

MR. MARCUS: No, we did not. What we did is we adopted the Schrag amendment to the Corn language and we have yet to vote on that amended language. That being the case, I would like to speak for the majority of the committee in that regard.

CHAIRMAN FREEMAN: Thank you. Delegate Marcus.

(6-A)

MR. MARCUS: I know that a number of delegates who decided to vote for the inclusion of the Schrag amendment to the Corn language believed that what they were doing essentially was voting for a clearer version of what the committee felt intended. Unfortunately, you did not do that. Let me explain why. There are several reasons.

What the committee's language does is establish a right of the individual consumer in regard to how the utility company charges that consumer for the service they provide. It is the flip side, as we heard, essentially of the right of the investor to return on their individual investment.

What we have done --

MS. GRAHAM: I would like to ask what is --

CHAIRMAN FREEMAN: Delegate Graham, is this a point of order?

MS. GRAHAM: Yes. I would like to know what is going on. I don't understand.

MR. MARCUS: Well, I am speaking to --

CHAIRMAN FREEMAN: Delegate Marcus, I would like to answer for clarification in case other delegates are confused.

Delegate Corn had a minority report which involves putting a period in at the end of line 14 on page 6, that is Section 2, subsection (a). We amended her proposed amendment with the words of Delegate Schrag, which were to continue that line with "and unreasonably high rates based on excessive capital investment shall not be permitted." We are now back to voting on the original Corn minority report, as amended by Delegate Schrag.

Delegate Marcus.

MR. MARCUS: So as I was saying, what the committee is attempting to do is establish a new right for the consumer in regard to the way that they are charged for services. Delegate Schrag's language does not do that. What Delegate

Schrag's language does is simply throw a little bit more life onto the situation for the public utility commission, but it doesn't establish that right.

In addition, there are several problems in regard to the way that the language is included. Total cost, which is how utility rates are established, total costs consist of two things. They consist of fixed costs, which are generally the operating costs, and variable costs, which are generally capital investment costs.

The goal is to have the lowest possible total cost. Sometimes the alternative involving high investment cots which are capital costs which the Schrag language speaks to but low fixed costs may have lower total costs than low investment costs. In other words, what happens is, as what Delegate Schrag is saying is that you can create a constraint on the capital costs, the investment costs which theoretically would produce lower total costs. That is not always the case, and let me give you an example.

At PEPCO's Chalk Point plant, you have the plant burning low-sulphur oil. That is a system which --

CHAIRMAN FREEMAN: Could we please have quiet in the room.

MR. MARCUS: This really is rather complicated and you need to listen to what I am saying.

The system burns low-sulphur coal which is a system which results in low capital costs but high operating costs. It is the opposite. It is the opposite. What Delegate Schrag's amendment would do is it would force Chalk Point to use lower capital costs, for example, burning low-sulphur coal, but that results in higher operating costs. All right? Conversion to that sort of system may meet the qualifications of Delegate Schrag's amendment, but does not meet the qualifications of the desire of the body to come up with lower total costs. In fact, what that would result in doing is strengthening the hand of the utility companies when in fact they desire to create lower capital costs, higher operating costs, hence total total costs, in fact.

One more point. There is no standard set here for unreasonable capital investments. There is no way to safeguard that. There is no new right created for the consumer in this particular regard. The language of the article that the committee presented does in fact create a standard. The reasonableness of capital investments, as Mr. Schrag lays out, can be influenced by factors other than those intended by the committee, hence I think intended by those people who voted to vote down Mr. Schrag's original amendment.

Again, what we are attempting to do is establish the right --

CHAIRMAN FREEMAN: Delegate Marcus, time. Finish your sentence.

MR. MARCUS: Thank you.

CHAIRMAN FREEMAN: Delegate Love.

MR. LOVE: I move the question.

CHAIRMAN FREEMAN: Is there a second to that?

MR.   : I second it.

CHAIRMAN FREEMAN: Delegate Schrag.

MR. SCHRAG: Before this motion is voted on, I would like 15 seconds to reply to Delegate Marcus.

CHAIRMAN FREEMAN: Right. I will go through the list though in order, Delegate Schrag.

Delegate Jones.

MS. JONES: Can you tell me who seconded the Corn amendment? I didn't hear it.

MR. SCHRAG: With all due respect, Delegate Marcus, I think that argument that you just made is a smoke screen because the words that both of us accept, in the committee's text and that I leave unchanged, lowest reasonable costs, encompass both investment costs and operating costs. And under this section as amended, we are not forcing any utilities to inflate operating costs because everything has to be the lowest reasonable cost, period.

CHAIRMAN FREEMAN: Is there anybody else who would like to speak in favor of this, because the committee has spoken?

MR. LOVE: I call for the vote.

CHAIRMAN FREEMAN: All right, the question has been called on the Corn minority report as amended by the Schrag amendment. Is there any need for repeating that? Is everybody clear? Shall I repeat it one more time?

Subsection (a) of Section 2, the Corn minority report, with the Schrag amendment reads as follows: "Utility services shall be provided at the lowest reasonable rates sufficient to assure adequate, efficient and reasonable services and unreasonably high rates based on excessive capital investments shall not be permitted."

Those who are in favor of the Corn minority report as amended, please raise your hands.

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN FREEMAN: Those who are opposed, please raise your hands. Keep them up, please.

(A show of hands.)

MR. BRUNING: 11.

CHAIRMAN FREEMAN: Are there abstensions? Are there abstensions?

(No response)

CHAIRMAN FREEMAN: Is there a call for a recount?

All right, delegates, I know it is getting very late but this is the second time we have gone through vote confusion. Now this time I am going to ask you to stand up, and there can be no confusion as to that. We are voting -- Delegate Jones.

MS. JONES: I rise on a point of order. I would like to remind the delegates that the elevator stops at 11:00 and they will close the elevator and we have to end in time to break down the equipment.

CHAIRMAN FREEMAN: Thank you. We will take the final vote and I will entertain a motion to adjourn.

Those who are in favor of the Corn minority report as amended, please stand up and stay standing up.

(A show of delegates standing.)

MR. BRUNING: 12.

CHAIRMAN FREEMAN: Those who are opposed, please stand up.

(A show of delegates standing.)

MR. BRUNING: 10.

CHAIRMAN FREEMAN: All right, those who are abstaining, please stand up.

(A show of delegates standing.)

MR. BRUNING: One.

CHAIRMAN FREEMAN: All right, the Corn minority report as amended passes. The vote was 12 in favor -- Delegate Feeley.

MS. FEELEY: The vote was not -- what happened was there were delegates who were counted who were not on the floor of the convention and therefore it did not pass. You cannot count people who are not on the floor of the convention.

(Inaudible discussion)

CHAIRMAN FREEMAN: Delegates, we have a choice of either voiding that vote or --

MR. JACKSON:There were two votes on this. The first vote was not listed to be for the amendment, some thought it was on Schrag and some thought it was another vote, and when it was opposite -- the first vote carried and the second vote didn't. There is nothing that allows members to lose on the first vote and then go to the back of the room and lobby. The vote is no.

CHAIRMAN FREEMAN: The reason why I called for the second vote was I was confused and could not hear. I was not aware of any lobbying going on. There were hands going up and down and there was confusion as to who was voting for what and that is why I called for the second vote and that is why I had delegates stand.

MS. JONES: A point of order. Is there anything in our rules that says where we have to be to be voting at this convention?

(Inaudible discussion)

MR. LOVE: Madam Chairman, I move Section 2(a), (b) and (c).

MR. : I second it.

CHAIRMAN FREEMAN: It has been moved and seconded --

MR. : I move that we adjourn.

CHAIRMAN FREEMAN: There is a motion on the floor. It has been moved and seconded that Section 2(a), (b) and (c) be adopted.

MR. NIXON: A point of order.

CHAIRMAN FREEMAN: Delegate Nixon.

MR. NIXON: I suggest the absence of a quorum.

CHAIRMAN FREEMAN: There has been a quorum call. Would the Secretary please see if we have a quorum.

(Inaudible discussion.)

CHAIRMAN FREEMAN: Delegates, the meeting is still in session. We shall either seek to get a quorum or I will entertain a motion to adjourn.

MS. : I move we adjourn.

MR. : I second it.

(Inaudible discussion.)

CHAIRMAN FREEMAN: We will adjourn and meet at 10:00 o'clock tomorrow morning. It has been moved and seconded that we -- Delegate Holmes.

MS. HOLMES: I would like to say for the record -- please be quiet --

CHAIRMAN FREEMAN: Delegate Holmes has the floor.

MS. HOLMES: I would like to say for the record that I think that the people that have been here all day, since early this morning up until to now are the only people who should be really given a hand for staying here this long.

(Applause)

CHAIRMAN FREEMAN: All those who are in favor of adjourning, please say "aye."

(A chorus of "aye.)

CHAIRMAN FREEMAN: Opposed?

(No response.)

CHAIRMAN FREEMAN: Thank you. We are now adjourned.

(Whereupon, at 10:53 o'clock p.m., the meeting was adjourned, to reconvene on Saturday, May 15, 1982, at 10:00 a.m.)

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